



Indiana Department
of Natural Resources

Eric Holcomb, Governor
Cameron F. Clark, Director

14619 W. State Road 48
Jasonville IN 47438-7056
May 15, 2019

CERTIFIED MAIL # 7016 3560 0000 7518 9325
MARK MILLER
P O BOX 3009
EVANSVILLE IN 47730

RE: Permit Renewal Approval/Issuance
Seven Hills Mine
Permit #S-357 Renewal

Dear Mr. Miller:

The Director of Department of Natural Resources has approved and issued the above-mentioned permit renewal application with one (1) condition(s).

Since you may be a person with an interest which is or may be adversely affected by this decision, you are herein notified that pursuant to I.C. 14-34-4-13, I.C. 4-21.5-3-5, I.C. 4-21.5-3-7, and 312 IAC 25-4-122, you may request a hearing to review the approval of this permit amendment application including any of the conditions placed on the approval. Request for a hearing shall be submitted to the Natural Resources Commission, Division of Hearings, IGCN Room N103, 100 North Senate Avenue, Indianapolis, IN 46204 by June 14, 2019; or a Petition for Review is filed by someone other than yourself, you may obtain copies of notices of conferences, hearings, or any orders issued in the case by sending a written request to the Natural Resources Commission, Division of Hearings at the same address.

Please contact this office at telephone number (812) 665-2207 or 1-800-772-6463 if you have questions regarding these matters.

Sincerely,

Colleen Baughman
Permit Coordinator, Technical Services
Division of Reclamation

CB/tam
Cc: J. file
Reclamation Specialist
Enclosure

Results of Review of
Permanent Program Permit Renewal Application #S-357
United Minerals Company, LLC
Seven Hills Mine

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Department of Natural Resources
Bureau of Mine Reclamation
Division of Reclamation
MAY 2019

Introduction

The Indiana Department of Natural Resources, Division of Reclamation, the Regulatory Authority in Indiana under I.C. 14-34-2 as approved by the U.S. Department of Interior, Office of Surface Mining, has reviewed in accordance with I.C. 14-34 and Indiana Administrative Code 312 IAC 25, Seven Hills Mine's surface coal mining and reclamation operations permit renewal application. United Minerals Company, LLC submitted a written renewal request required by the Department. The Department has reviewed this renewal pursuant to 312 IAC 25-4-117. The Department has decided to approve and issue the renewal application. The Department's decision is based upon a review of the record as a whole and is supported and documented by the record. The statements below give the findings and reasons for the Department's decision. The period for filing an administrative review request under 312 IAC 25-4-122 ends thirty (30) days after the applicant's receipt of the notice of the approval and issuance.

- I. Consideration of a request by United Minerals Company, LLC for renewal of the rights granted by a permit issued pursuant to I.C. 14-34 for the Seven Hills Mine.

NAME AND ADDRESS OF APPLICANT:

PERMIT #: S-357

United Minerals Company, LLC
566 Dickeyville Road
Lynnville, IN 47619

PIT NAME: Seven Hills Mine

COUNTY: Warrick

ACRES: 2,351.2

TYPE OF MINING: Surface

TYPE OF APPLICATION: Renewal

LOCATION: Parts of Sections 27, 28, 33, 34 & 35, T4S, R9W; and Parts of Sections 1-4, 10, 11 & 12, T5S, R9W.

NAMES AND ADDRESSES OF OFFICERS OF APPLICANT:

<u>Name</u>	<u>Address</u>	<u>Title</u>
James Marchino	566 Dickeyville Rd. Lynnville, IN 47619	Vice President
Mark Scimio	" "	Vice President
Scott Jarboe	" "	Secretary
Marc Hathhorn	" "	President
James Tichenor	" "	Vice President and Treasurer
Robert Bruer	" "	Vice President
Daniel Schulte	" "	Assistant Treasurer
Joseph Lutkewitte	" "	Assistant Treasurer
Michael Curoe	" "	Assistant Treasurer

NAMES AND ADDRESSES OF PRINCIPAL SHAREHOLDERS OF APPLICANT:

<u>Name</u>	<u>Address</u>
Peabody Midwest Mining, LLC	566 Dickeyville Rd. Lynnville, IN 47619

NAME AND ADDRESS OF SUBCONTRACTOR(S): N/A

PERMIT TERM: March 27, 2019 to March 26, 2024

DATE APPLICATION SUBMITTED: November 19, 2018

DATE DEEMED COMPLETE: November 21, 2018

DATE OF MODIFICATIONS LETTER: N/A

DATE OF MODIFICATIONS APPROVAL: N/A

II. Public Participation

The public notice pursuant to 312 IAC 25-4-109 was run in the Boonville Standard newspaper on January 17, 24 & 31, and February 7, 2019. The public comment period expired on March 9, 2019.

Utilities or agencies in or near the permit area which were notified of the proposed mining operations were as follows:

US Fish and Wildlife Service
Mine Safety and Health Administration
Indiana Bureau of Mines and Mine Safety
US Army Corps of Engineers
Indiana Department of Transportation
Indiana Department of Environmental Management
Indiana Department of Natural Resources - Division of Nature Preserves
Warrick County Commissioners
Warrick County Library
Warrick County Area Plan Commission
Elberfeld Water Company
Vectren
Verizon
AFL-CIO

Agency Comments

The following is a summary of substantive agency comments received on the permit renewal application with the Department's response to each comment. These comments were forwarded to the applicant and the appropriate county library.

US FISH AND WILDLIFE SERVICE

Comment: "The aforementioned permit is within the range of the federally endangered Indiana bat (*Myotis sodalis*) and the federally threatened northern long-eared bat (*Myotis septentrionalis*).

"Our records indicate that the applicant has not addressed impacts to the northern long-eared bat. To comply with the Endangered Species Act, it should either be included in a revised Indiana Bat PEP or a streamlined consultation form under the 4(d) rule should be completed. Information related to the streamlined consultation can be found online at: <https://www.fws.gov/midwest/endangered/mammals/nleb/>

"For further information, please contact me or Marissa Reed at (812) 334-4261."

Response: The Department required the applicant to modify the currently approved permit pursuant to 312 IAC 25-4-46 and 25-6-46 with the submittal of an updated Protection and Enhancement Plan (PEP) to address the northern long-eared bat.

INDIANA DIVISION OF NATURE PRESERVES

Comment: "In December 1996 a Conservation Agreement and Strategy identified copperbelly water snake (*Nerodia erythrogaster neglecta*) Core Habitat Areas along Pigeon Creek. This agreement was co-developed by the following partners: IDNR, U.S. Fish & Wildlife Service, and the Indiana Coal Council. The development of this Agreement was to preclude the need for federal listing of this species in southern Indiana. It appears that a portion of the proposed permit area falls within a segment of one of the Core Habitat Areas, more specifically in portions of Sections 3, 10, and 11 in Township 5S and Range 9W of the Daylight Quadrangle. Although the above referenced Conservation Agreement and Strategy for copperbelly water snake expired in 2007, all parties to the Agreement voluntarily continued to honor it. The Agreement clearly intended and stated that its goal was "to ensure the continued existence of the copperbelly water snake". The Agreement further states that the primary focus was "conservation and enhancement of the copperbelly water snake and its habitat" and thus the reason for identifying core area habitat designations.

"As stated in previous reviews, it is clear that past surface mining activities have had significant cumulative and detrimental impacts to floodplain and swamp forests along Pigeon Creek. Loss of additional forest as a result of continued mining will further fragment habitats and disrupt important bottomland forest communities and associated species including the copperbelly water snake. Moreover, such anticipated disturbances are not consistent with the intent of the Conservation Agreement and Strategy, which was designed to ensure the long term protection of the State Endangered copperbelly water snake. Because of the likelihood of detrimental impacts as a result of this proposal to copperbelly water snakes as well as several other listed and non-listed wildlife species, the IDNR Division of Fish & Wildlife and the U.S. Fish & Wildlife Service should be closely coordinated with for their input, especially regarding the listed species under their jurisdiction.

"Several element occurrence records for state listed animals are mapped in the vicinity of the proposal as indicated by review of the Indiana Natural Heritage Program files. Although there are additional records for listed species in the general vicinity of the proposal, the following appear to be mapped within the proposed permit area.

"Copperbelly water snake (*Nerodia erythrogaster neglecta*) – State Endangered. EO #28. Date of record: May 28, 1999. Mapped precisely at 38.1105 and -87.3955. Source: Joseph Hummer.

"Evening bat (*Nycticeius humeralis*) – State Endangered. Element Occurrence #44. Date of record: July 29, 2007. Mapped precisely at 38.1244 and -87.4. Source: EcoTech.

"Eastern red bat (*Lasiurus borealis*) – State Special Concern. EO #116. Date of record: May 30, 2007. Mapped precisely at 38.1425 and -87.4086. Source: EcoTech.

"Northern harrier (*Circus hudsonius*) – State Endangered. EO #24. Date of record: July 12, 2000. Mapped precisely at 38.1166 and -87.4075. Source: Midge Lechner and Tom Good.

"Cerulean warbler (*Setophaga cerulea*) – State Endangered. EO #50. Date of record: June 1995. Mapped precisely at 38.1416 and -87.4141. Source: Jim Campbell and Midge Lechner.

Response: The copperbelly watersnake habitat was addressed in the originally approved Permit #S-357, Part VIII. Therefore, the Department finds the applicant made an adequate demonstration that the requirements of 312 IAC 25-4-46 and 25-6-46 have been met. It should be noted that the vast majority of the copperbelly watersnake core area habitat is within the Conservation Easement and No Mining Areas described on the Indiana bat Protection and Enhancement Plan map.

Similar habitat to that found within the permit area exists adjacent to the permit area, and this habitat will provide food and shelter for the above species during mining and reclamation operations. Generally, as a result of federal and state regulatory reclamation requirements, reclaimed sites include mitigated wetlands and streams having increased species and habitat diversity thereby enhancing the ecological function of the area. The additional range of terrestrial and aquatic habitat types as a result of reclamation is an improvement over existing conditions.

INDIANA DIVISION OF HISTORIC PRESERVATION AND ARCHAEOLOGY

Comment: "In accordance with rules outlined under 312 IAC 25-4-27 a review of the S-357 Seven Hills permit has revealed the entire permit area has been surveyed for archaeological remains or was previously disturbed by mining activity. There are two sites that require further action prior to disturbance, sites 12W81/187 and 12W902 are within the permit area. Any ground disturbance near site 12W81/187 will require monitoring by the DoR Archaeologist. The character and potential significance of 12W902 will require further archaeological investigation prior to any ground disturbance to evaluate the eligibility of the site for National Register."

Response: Site 12W81/187 was excavated in the past; however, the report is unfinished and there may still be subsurface features present. To mitigate any effects on remnant features, United Minerals Coal has agreed to have any ground disturbance in the area of 12W81/187 monitored by the DoR Archaeologist. Site 12W902 is located within the no effects Protection and Enhancement Plan area and will not be disturbed by mining activities.

COUNTRYMARK

Comment: "The public notice of application for a permit to conduct surface coal mining and reclamation operations at the Seven Hills Mine, located 1-1/2 miles northeast of the intersection of New Harmony Road and County Road 950 West near Millersburg, Indiana was reviewed for utility conflict. The permit area consisting of 2531.2 acres is described as Parts of Sections 27, 28, 33, 34 & 35 T4S, R9W; Parts of Sections 1, 2, 3, 4, 10, 11 & 12, T5S, R9W, Warrick County, IN. Countrymark Refining & Logistics, LLC has determined there are no pipelines owned by Countrymark Refining & Logistics, LLC within the area specified in the application.

"If you find Countrymark Refining and Logistics pipeline markers which indicate the presence of a pipeline within the site please call 812-838-8200."

Response: No Department response is necessary to address this comment. However, this information was forwarded to the operator for their consideration.

Public Comments

Pursuant to the public participation provisions of 312 IAC 25-4-111, 25-4-112 and 25-4-117, the following is a summary of substantive public comments, both verbal and written, received on the permit renewal application with the Department's response to each comment. These comments were forwarded to the applicant and the appropriate county library.

An informal conference was held pursuant to 312 IAC 25-4-112 on April 17, 2019 to solicit comments from any person having an interest that is or may be adversely affected by the Department's decision on the renewal application.

BIL MUSGRAVE

Comment: To summarize, Mr. Musgrave expressed concerns over the closing of Weyerbacher Road and the impact the closing would have on emergency response vehicles, mining operations severing/closing the Boonville-New Harmony Road, Greenbriar Road and Wasson Road, preventing access to private property, wetlands restoration, disturbances to Pigeon Creek when the beltline is installed, and the depth to the coal.

Response: Weyerbacher Road is nearly one mile away from the eastern boundary of the Seven Hills permit area. Mining and reclamation operations proposed under this permit will not impact Weyerbacher Road.

The currently approved permit does not allow mining within the right-of-way or through any public road. General Permit Requirement #2 in the original permit prohibits mining operations within the right-of-way of Seven Hills Road, Schultz Road, Boonville-New Harmony Road, Godeke Road, Independence Road, Millersburg Cemetery Road,

Greenbriar Road and Wasson Road until the Department finds in writing that the Warrick County Commissioners approval to close the roads has been submitted and the interests of the public and affected landowners will be protected.

However, mining and reclamation operations are approved within 100 feet of the right-of-way of Boonville-New Harmony, Greenbriar and Wasson Roads. Part IX.C.2. of the approved permit provides a cross-section showing the proposed operations to be conducted within 100 feet of the outside right-of-way of these public roads, including the right-of-way boundary, safety berms, highwalls and other structures to be located within 100 feet of the road. United Minerals Company, LLC has also published a notice in the local newspaper to alert the public and affected landowners of the proposed mining activities. The Department finds the interests of the public are adequately protected and the requirements of 312 IAC 25-3-1.(4) have been met. Access to private property should not be impeded.

Regarding the wetlands, the western section of the permit area is predominantly a forested wetland. Upland areas within the western section are composed of forests, grasslands, and some agricultural fields. The eastern section of the permit area is previously mined land with final cut basins filled with open water. Vegetation primarily consists of upland grasses, with small scattered wetland areas interspersed throughout. Predominantly, wetlands delineated in this area drain internally into the basins, and are potentially isolated from waters of the U.S.

Fine coal refuse (slurry) will be pumped east to RB001 as shown on Map 6. At the point where the slurry line crosses Pigeon Creek, the slurry line will be encased in a second pipe. The slurry line will cross Pigeon Creek at the location of the old Greenbrier Road Bridge. Although not in use anymore for vehicle traffic, the bridge is still intact and capable of supporting the slurry line. See Attachment IV.G., Item C-1 for a diagram of the crossing. The encased slurry line would be placed on the road surface of the Greenbrier Road Bridge. Slurry pipelines will be periodically visually inspected to ensure hydraulic integrity and proper function. In the event of a slurry pipeline rupture and/or spill, released material will be controlled using straw bales, silt fences, earthen berms, temporary diversions, sumps, and/or other available means to capture, immobilize, and contain released material. The released slurry and affected soils will be removed for disposal as specified in Attachment IV.F. The affected area will be reclaimed to the approved land use according to requirements specified in Part VII. The Department finds the applicant made an adequate demonstration that the requirements of 312 IAC 25-6-36 have been met.

According to Part V of the approved permit, the average depth to the lowest coal seam to be mined is 135 feet.

MARK MILLER

Comment: Mr. Miller submitted an objection to the permit renewal application on behalf of Mark Hendrickson and Big Ditney Recreation Limited, LLC. The formal objection was received by the Department on March 7, 2019. Neither of these entities are identified as property or mineral owners within the Seven Hills permit area. Hendrickson and Big Ditney object to the renewal application because a variance to mine within 100 feet of public roads and permit revisions may adversely affect their use of and access to the Hendrickson Real Estate. No Department response will be provided at this time because the above objections are related to an on-going Administrative Review involving another permitted operation.

During the informal conference, Mr. Miller stated the variance to mine within 100 feet of public roads was mentioned in the public notice, but the renewal application did not include the variance. Concerns were also raised over road closures preventing access to private property.

Response: 312 IAC 25-4-128 states that any valid, existing permit issued under this program shall carry with it the right of successive renewal upon expiration of the term of the permit. Successive renewal is available for those areas that were specifically approved by the Department in the application for the existing permit. This would include all areas added as a significant revision or during the Incidental Boundary Revisions process. A permit renewal application was submitted on the form approved by the Department and contained all the necessary information, including the proof of filing with the public library, public notice and the certificate of liability insurance. It is not necessary for the applicant to submit an entire, new permit application. All variances, including mining within 100 feet of public roads, can be found in the originally approved permit as described in the above response to Mr. Musgrave.

Mr. Miller also delivered two documents to the Department during the informal conference, one being a letter from the U.S. Fish and Wildlife Service to the ACOE concerning an application by United Minerals Company, LLC for an ACOE permit pursuant to Section 404 of the Clean Water Act. The other document was a letter from the U.S. Environmental Protection Agency (EPA) to the ACOE describing the EPA's review of the pending 404 Permit. See Attachments A and B, respectively. Both these letters were submitted to the ACOE as part of the pending 404 Permit review process. Until the 404 Permit is approved, the Department will not accept bond and mining activities may not occur on those areas designated as jurisdictional streams or wetlands until a Section 404 ACOE permit has been approved and a copy of the approval letter and applicable revisions submitted for inclusion in the Indiana Surface Coal Mining and Reclamation permit pursuant to 312 IAC 25-4-23 and 25-4-46.

LAURA FRASER

Comment: "I am a resident of Fisherville road and I am writing to express my concerns regarding the renewal permit of Seven Hills Mine S-357. Multiple subdivisions have been created along Asbury-Cemetery Road including Water's Edge where I live. These properties have controls in place by way of covenants that offer homeowner's certain protections by limiting how the land may be used and from common nuisance.

"However, with the proposed renewal of the mine within the close proximity of numerous homes, I feel these covenants were all for naught. The noise, pollution and inability to purchase insurance covering mine-related damage on our investment suggests a lack of concern for those of us who chose this rural area to build our dream homes. I am willing to confess to ignorance of the risks of purchasing a lot in this area as I assumed the local government would not condone such development unless it were safe. I assumed there are rules regarding the number of homes within a proximity of a mine and with all the development in this area we would be safe.

"My neighbors share stories about shaking homes and falling wall décor. Stories about dust in the air, on your home and car. Stories about cracked foundations without recourse as that's just how it is when you live near a mine. Stories shared by former coal employees with a lackadaisical attitude when it came to following the rules unless someone was watching. I have to believe that those days are over. I'd like to believe that our government have considered the impact to the people and have modified the rules, regulations and processes related to mining to protect the environment and the people who chose to build a home in a neighborhood with expectations based on permitted land use.

"The process of imposing fines does not prevent violations. A fine is a reaction. I assume the coal company factors in the cost of fines as an overall budget. Fines do not protect the residents of the area. The Division of Reclamation should have a quality management plan versus just a quality control (inspection) plan. Prevent rather than inspect. Be proactive rather than reactive. These are basic quality management principles and philosophies. Better yet, deny the permit renewal and put the people first.

I chose this area for the serenity, the interaction with nature and a place to build a home to spend the rest of my life. This mine activity may impact my health and destroy my future."

Response: Issues such as dust, noise, and property values are normally addressed on the local level with a county planning and zoning board or the county commissioners. United Minerals will control dust by applying water to their haul roads. Fugitive dust is regulated by the Indiana Department of Environmental Management, Air Management Section. The person to contact about air pollution concerns is Erin Mara at EMARA@idem.IN.gov, 114 South 7th Street, Petersburg, IN, 812-380-2309. Local zoning ordinances that may address noise or property values are enforced by the

appropriate local authorities. Purchasing insurance for property protection should be addressed with your insurance agent.

The Department realizes blasting has great potential to create concern among property owners in the coal mining community. It is for this reason the State regulatory program has adopted strict rules regarding blasting that limit the type of explosives and detonating equipment, as well as the size, timing, and frequency of the blasts. We analyze the physical conditions of the site and the proposed blasting plan to make sure all blasting is conducted in a manner that prevents the following:

- a. Injury to persons.
- b. Damage of public and private property.
- c. Adverse impacts on an underground mine.
- d. Change in the course, channel, or availability of surface or ground water outside the permit area.

Blasting plans within the application are designed to prevent damage to structures such as homes, buildings, pipelines, and water wells. Blasting activities are strictly regulated and inspected on a frequent basis by blasting specialists in accordance with state and federal laws to prevent damage to structures caused by blast vibration and airblast.

The laws are based on extensive scientific research and analysis of homes near coal mines. Most of the research was conducted by the United States Bureau of Mines in the state of Indiana. The law does not restrict coal mine operators from causing vibrations which are perceptible by people, possibly rattling dishes or items on shelves. Although this may be disturbing at times, structural damage is unlikely if the blasting plan is closely followed. The ground vibration limits are designed to prevent even the slightest damage to structures, called cosmetic damage, from occurring to the most sensitive building materials. The limits established in mining law do not address the prevention of damage to non-structural materials (i.e. wall hangings) or nuisance aspects.

To ensure compliance with the blasting plan, the Department requires that all blasting be conducted under the direct supervision of a certified blaster. A certified blaster is an individual who has met experience, education, and testing requirements. The certified blaster makes sure the blast design contains sketches of the drill pattern, delay periods, and decking. The plan must also indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of the structures to be protected, as well as a discussion of design factors to be used to protect the public and meet the applicable blasting regulations.

Blasting records maintained at the mining operation are regularly reviewed by the Department for compliance with all applicable explosive usage laws and regulations.

There are many blasting requirements the operator is required to do to protect the public. These include the following:

- a. Publishing and distributing a blasting schedule. The blasting schedule is published in a newspaper of general circulation in the locality of the blasting site, and copies of the blasting schedule are mailed to each residence within one-half mile of the proposed blasting area described in the schedule.
- b. Warning and all clear signals. These signals must be audible up to one-half mile from the blast site and shall be explained in the blasting schedule. The all clear signal will not be sounded until the blast area is inspected to insure that travel through the area is safe. Warning signs which display "Blasting Area" will be posted on the edge of the blasting area. Mine entrances will be posted with signs reading "Warning - Explosive in Use" and will explain warning signals. The certified blaster will inspect the blast area prior to detonation to insure people and livestock are clear.
- c. Controlling access to the blast area. United Minerals personnel will control all traffic on roads close to the blasting area and prohibit entrance into the blasting area until the all clear signal is sounded.
- d. Controlling airblast. Airblast is controlled so the maximum limit is not exceeded. Proper blast design aids in prevention of excessive airblast.
- e. Controlling flyrock. Flyrock, including material traveling along the ground, shall not be cast from the blasting site more than one-half the distance to the nearest dwelling or other occupied structure, beyond the boundary of the bonded area, or beyond the area of regulated access.
- f. Controlling ground motion or vibration. All structures in the vicinity of the blasting area, including dwellings, public buildings, churches, schools, community or institutional buildings, water towers, pipelines and other utilities, dams, impoundments and underground mines shall be protected from damage by establishing a maximum allowable limit on ground motion.

United Minerals submitted documentation certifying that they have a public liability insurance policy in force for the surface coal mining and reclamation operation. The certificate provides for personal injury and property damage protection in an amount adequate to compensate all persons injured or property damaged as a result of surface coal mining and reclamation operations, including use of explosives and damage to water wells. The policy is maintained in full force during the life of the permit including completion of all reclamation operations.

If the blasting operation is the cause of personal injury or property damage, the individual may pursue the issue as a civil matter with the permittee. The Department is not authorized to adjudicate claims that may arise from blasting operations and is not party to damage claim awards and/or settlements. Disruption, diminution, or damage to water supplies (including municipal water supplies) caused by the mining operation, however, must be promptly rectified at the permittee's expense.

The permittee must conduct a pre-blast survey upon written request by a resident or owner of a dwelling or structure that is located within one mile of the permit area. The survey documents the condition of the dwelling or structure and any other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipelines, cables, transmission lines, cisterns, wells and other water systems warrant special attention.

A written report of the survey is prepared and signed by the person who conducted the survey. Copies of the report are given to the person requesting the survey and to the Division of Reclamation. If the person requesting the survey disagrees with anything in the report, they should notify the permittee and the Division in writing.

If there is a complaint concerning blasting, the Division of Reclamation should be contacted toll free at 1-800-772-6463. All complaints will be investigated to determine if the blasting operations comply with the law.

The Division of Reclamation has a limited number of seismographs available to monitor blasting operations of coal mines in Indiana. The Division will place a seismograph near this mine as one becomes available. The Division of Reclamation can be reached toll free at 800-772-MINE (6463).

The purpose of the state regulatory program is to assure that the rights of surface owners are fully protected and that surface mining operations are conducted to protect the environment. The Department spent a great deal of time reviewing every technical aspect of the original permit application as well as providing opportunities for public comment. The approved permit addresses many other areas of public property and environmental protection not already mentioned in the public comments above, such as topsoil handling, drainage control, back-filling and grading, and revegetation. All these activities are essential components of a mining and reclamation plan. The Department will exercise the full reach of its authority to ensure the protection of the public interest and the environment through effective control of surface coal mining operations.

There will be two inspectors assigned to this mine. One inspector will check all the blasting requirements, and another inspector will review compliance with all other regulations. The blasting inspector, at a minimum, will conduct quarterly inspections that involve a complete review to ensure all blasting regulations and permit conditions are being complied with.

The compliance inspector is required to conduct inspections on a monthly basis for all active sites, and quarterly for mines that have all the grading portion of the bond released. At least one inspection on the active sites in each quarter must be a complete inspection that evaluates all phases of the operation. However, the frequency of inspections may increase if operational or environmental concerns warrant a closer look. These inspections occur without advance notice unless it is necessary for mine personnel to be present to view and discuss issues. All inspections are documented in writing, and a copy of the report is filed with the county library.

Inspections can also occur whenever the inspector receives information from any person that alleges an operation is in violation. That person may accompany the inspector on the inspection. Copies of inspection reports and enforcement actions will be given to the person who caused the inspection to be made. The identity of any person supplying information to the division relating to a possible violation will remain confidential if requested by that person unless that person elects to accompany the inspector on the inspection or disclosure is required by law.

All violations of the rules and approved permit are assessed. The purpose of the assessment is to discourage repeat violations. Stronger enforcement action is available in the case where the mining company refuses to comply with an enforcement order or establishes a pattern of violations. Stronger enforcement actions include cessation orders, permit modification, suspension or revocation, and bond forfeiture.

CHRIS CURRY

Comment: Mr. Curry stated that mining will occur on two sides of his property. He has five children at home, with one of them suffering with lymphoblastic leukemia. Mr. Curry mentioned that the mining may stir up dust and fungus in the air that causes respiratory issues. He contacted the mine operator in hopes that United Minerals will work with the family to keep his children safe from dust. Mr. Curry presented the following letter from Susanne Ragg MD, PhD, Associate Professor of Pediatrics, Indiana University, School of Medicine, dated March 31, 2016:

"James Curry was diagnosed with acute lymphoblastic leukemia. Invasive aspergillosis is a life-threatening complication of anticancer therapy. The overall mortality rate associated with this infection in patients with leukemia is 77%. The presence of construction work near the patient's home is an important risk factor for the development of invasive aspergillosis. Filamentous molds such as *Aspergillus* spp are acquired by inhaling microscopic conidia that are borne on ambient air currents which are increased within the environment due to construction activity."

Response: We will work with United Minerals to do everything in our power to limit the amount of dust generated from the mine site. As previously noted, fugitive dust is regulated by the Indiana Department of Environmental Management, Air Management Section. The person to contact about air pollution concerns is Erin Mara at EMARA@idem.IN.gov, 114 South 7th Street, Petersburg, IN, 812-380-2309.

STACEY EMBRY

Comment: Concerns were expressed about drainage on the property, whether flow across his property would be impeded or if the haulroad would act like a dam to water flow. Also, how can United Minerals place wetlands on his property without a lease agreement?

Response: The Embry property is located outside the permit area. Regardless, the Department shares the public's concern in regard to protecting the area's hydrologic balance. Protection of the hydrologic balance is one of the many reasons the Division of Reclamation exists as a regulatory agency. Disturbances during mining will affect the quantity of surface water within and in close proximity to the permit area. To protect offsite areas, all surface water is diverted to sediment ponds where the eroded sediments are trapped and collected. All water leaving the permit must meet the state and federal regulations pertaining to water quality throughout the life of the mine.

This disturbance is temporary in nature, and after mining is completed, surface water quantity within the permit and adjacent areas should return to near pre-mining conditions.

As far as the placement of wetlands on the Embry property, no surface disturbance can occur here unless the property is permitted, a lease is obtained, post-mining land use comments are obtained and the land is bonded.

III. Summary of Department Findings

Based upon the information set forth in their permit renewal application and from information otherwise available, the Department of Natural Resources makes the following findings with respect to the renewal application for Permit #S-357 pursuant to 312 IAC 25-4-131:

- a) The terms and conditions of the existing permit are being satisfactorily met.
- b) The present coal mining and reclamation operations are in compliance with the environmental protection standards under I.C. 14-34 and 312 IAC 25-6-1 through 25-6-148.
- c) The requested renewal does not substantially jeopardize the operator's continuing responsibility to comply with I.C. 14-34 and the regulations on the existing areas.
- d) The operator has provided evidence that any performance bond required to be in effect for the operations will continue in full force and effect for the proposed period of renewal, as well as any additional bond the Director might require pursuant to 312 IAC 25-5-1 through 25-5-19.
- e) The applicant has provided additional revised or updated information required by the Director.
- f) No operations owned or controlled by United Minerals Company, LLC are currently in violation of I.C. 14-34, 30 USC 1201 et. seq., 312 IAC 25, or any law, rule, or regulation of the United States, or of any Indiana law, rule, or regulation pertaining to air or water environmental protection.
- g) The Department finds United Minerals Company, LLC, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of I.C. 14-34 of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of I.C. 14-34.
- h) The Department finds United Minerals Company, LLC will be required to pay fees with the first payment due on a quarterly basis related to coal production within thirty calendar days of the end of the quarter in which coal is removed, pursuant to I.C. 14-34-13.

IV.

General Permit Requirements

The renewal of operations to be conducted at United Minerals Company, LLC Seven Hills Mine for the reasons set forth in the above findings shall comply with the following requirement that affirms the requirements set forth within the permit renewal application:

- 1) United Minerals Company, LLC will continue to conduct operations involved in full compliance with the terms and conditions of the original permit issued pursuant to I.C. 14-34.

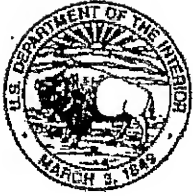
All materials supporting these findings are a part of the public record and are hereby incorporated by reference. This application, including all plans and acreage contained therein, is hereby incorporated into and made a part of Permit #S-357. Based upon the information contained in the permit renewal application, information otherwise available and made available to the applicant, all findings and information contained herein, the Department is approving and issuing this renewal application of United Minerals Company, LLC.

Enter on behalf of the Indiana Department of Natural Resources, Division of Reclamation as Regulatory Authority.



Chris Smith
Deputy Director
Department of Natural Resources

Dated: May 08, 2019



United States Department of the Interior Fish and Wildlife Service



Indiana Field Office (ES)
620 South Walker Street
Bloomington, IN 47403-2121
Phone: (812) 334-4261 Fax: (812) 334-4273

October 19, 2018

Ms. Teresa Spagna
U.S. Army Corps of Engineers
Huntington District, CELRH-RD-E
502 Eighth Street
Huntington, WV 25701-2070

Dear Ms. Spagna:

The U.S. Fish and Wildlife Service (FWS) has reviewed Public Notice #LRH-2018-00738-OHR, concerning an application by United Minerals Company LLC for a Department of Army permit, pursuant to Section 404 of the Clean Water Act. The application is for stream and wetland impacts from the proposed Seven Hills Mine (S-00357) in Warrick County, Indiana.

These comments are consistent with the Fish and Wildlife Coordination Act (16 U.S.C. 661 et. seq.), the National Environmental Policy Act of 1969, the Endangered Species Act of 1973, and the Indiana Coal Mining Regulatory Program, Section 310 IAC 12-3-107.

The proposed permit area covers 1,747 acres. The proposed water resource impacts include over 55,339 feet of stream channel (10,739 feet ephemeral, 44,600 feet intermittent, and 213 feet perennial), approximately 420.18 acres of wetlands (362.14 acres forested, 29.41 acres shrub, and 27.33 emergent), and 104.5 acres of open water.

The permit area contains a combination of undisturbed bottomland along Pigeon Creek, including approximately 7,876 feet of the Pigeon Creek channel, and previously mined land in the North Millersburg, South Millersburg and Ayrshire mines. Most of the previously mined land was reclaimed to a mixture of forest, wildlife, and agricultural land uses.

Wildlife

The affected wetlands and other bottomland forest provide abundant habitat for numerous and significant wildlife species, including migratory birds, Indiana bats (*Myotis sodalis*), Northern long-eared bats (*M. septentrionalis*), and the copperbelly water snake (*Nerodia erythrogaster neglecta*). We do not have a comprehensive bird species list for the permit area, however bird surveys by Audubon Society members in the Buckskin Bottoms area north (upstream) of the permit area reported over 180 species of birds including nine species listed at that time as State-

endangered species.

An Indiana bat maternity colony from a known primary maternity roost tree has been documented using the southern portion of the proposed permit area for foraging, and bat survey results suggest the presence of an additional maternity colony, which forages on the northern end of the permit area. The proposed mining activity would impact approximately 690 acres of summer habitat for this species and restored forest will not become suitable habitat for many years.

At least one northern long-eared bat maternity colony was also documented using the permit area with the capture of reproductively active females during bat surveys. Northern long-eared bats generally require similar summer habitat to that of Indiana bats, therefore the proposed mining activity would impact approximately 690 acres of habitat for this species.

The copperbelly water snake is known to have reproducing populations along the Pigeon Creek corridor. Listing under the Endangered Species Act in southern Indiana was precluded due to implementation of a Copperbelly Water Snake Conservation Agreement and Strategy endorsed by the FWS, the Indiana DNR, and the Indiana Coal Council. Even though it has expired, the Agreement has proven effective at avoiding and conserving copperbelly water snake habitat.

Mitigation

According to the Public Notice, the applicant has avoided and minimized impacts to waters of the U.S. To compensate for the loss of waters of the U.S. the applicant proposes to: re-establish/establish 451 acres of forested wetlands on site, re-establish/establish 5,370 linear feet of ephemeral streams and 44,600 linear feet of intermittent streams on-site, establish 118 acres of riparian buffer on-site, re-establish/establish 149 acres of open water on-site, and restore 567 acres of forested wetlands off-site. Given the inherent difficulties in restoring wetlands of this magnitude and in this landscape, we encourage the Corps to ensure this mitigation is successful in restoring the functionality of these wetlands.

The Public Notice states that the applicant proposes to incorporate copperbelly water snake habitat features into its mitigation plan and to plant exfoliating bark tree species for Indiana and northern long-eared bats. Additionally, we recommend the mitigation plan follow the Copperbelly Water Snake Conservation Agreement and Strategy, described above.

Endangered Species


The proposed project is within the range of the federally endangered Indiana bat (*Myotis sodalis*) and the federally threatened northern long-eared bat (*M. septentrionalis*).

Under authority of the ESA, the Service concluded, in a letter dated October 28, 2013, the proposed Seven Hills Mine is in compliance with our 1996 national biological opinion issued to the Office of Surface Mining for the protection of federally endangered Species, pursuant to Section 7 of the ESA. In accordance with that biological opinion, United Minerals Company developed an Indiana Bat Protection and Enhancement Plan (PEP) outlining measures to

minimize take of Indiana bats. For the northern long eared bat, it should either be included in a revised Indiana Bat PEP or a streamlined consultation form under the 4(d) rule should be completed to address all ESA requirements.

For further discussion, please contact Marissa Reed at (812) 334-4261 ext. 215 or marissa_reed@fws.gov.

Sincerely yours,

Acty for 
Scott E. Pruitt
Field Supervisor



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONAL ADMINISTRATOR
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

NOV 05 2018

Colonel Jason A. Evers
District Engineer
U.S. Army Corps of Engineers
Huntington District
502 Eight Street
Huntington, WV 25701-2070

Subject: Comments on Public Notice LRH-2018-00738-OHR; Proposed Seven Hills Mine, Warrick County, Indiana.

Dear Colonel Evers:

The U.S. Environmental Protection Agency (EPA) has reviewed the above referenced public notice and the related Clean Water Act (CWA) Section 404 permit application submitted by United Minerals (Applicant) for discharges associated with the proposed Seven Hills Mine, an approximately 1,747-acre open pit coal mine in the Highland-Pigeon Creek watershed southeast of Elberfeld in Warrick County, Indiana. As currently proposed, the project would directly impact 420.18 acres of wetlands (of which 362.14 acres are forested wetlands), 55,339 linear feet of streams, and 104.5 acres of open water.

The proposed Seven Hills project would mine through 362 acres of floodplain forested wetlands and 10 miles of streams tributary to Pigeon Creek. From its headwaters, Pigeon Creek flows approximately 23 miles through the project area and bisects downtown Evansville, before joining the Ohio River. Project area aquatic resources consist of contiguous tracts of increasingly rare floodplain forested wetlands, which, based on EPA's review of the Applicant's Hydrogeomorphic Method (HGM) analysis, are high quality, near reference condition forested wetlands. The Pigeon Creek floodplain forested wetlands filter nutrients, excess sediments, and other pollutants from Pigeon Creek before it enters the Ohio River.

The CWA Section 404(b)(1) Guidelines (Guidelines) provide the substantive environmental criteria against which all Section 404 permit applications must be evaluated. Based on our review of the public notice and associated permit application materials, questions were raised as to whether the permit application met all aspects of the Guidelines. Therefore, we offer the following comments.

Alternatives Analysis 40 CFR Part 230.10(a)

Section 404 of the CWA requires applicants to provide enough detail in the application to determine compliance with the Guidelines. The amount of detail in the analysis should be

commensurate with the level of aquatic resources impacted.¹ We recommend that the applicant perform an alternatives analysis that estimates the direct, secondary, and cumulative impacts to jurisdictional waters resulting from each alternative considered, and demonstrate whether this alternative is the least environmentally damaging practicable alternative (LEDPA).

The Applicant should provide a comparative evaluation of the environmental impacts associated with additional feasible alternatives within the same coal basin that would meet the basic project purpose, or explain why the proposal is the only feasible option for the applicant.

Significant Degradation 40 CFR 230.10(c)

Indiana's CWA Section 303(d) list of impaired waters identifies biotic communities in Pigeon Creek as impaired as a result of current activities in the watershed.

The EPA is concerned that the additional loss of floodplain forested wetlands and tributaries could increase nutrient loading and sedimentation, causing or contributing to the significant degradation of Pigeon Creek and ultimately affecting the quality of the Ohio River.

Forested floodplain wetlands along Pigeon Creek also provide important watershed functions by helping to reduce the risk and severity of flooding to downstream communities by attenuating floodwater. EPA is concerned that the loss of these wetlands could increase the likelihood of downstream flooding.

Cumulative Impacts 40 CFR 230.11 (g)

The Applicant's proposal to impact 420.18 acres of wetlands and 10 miles of streams at the Seven Hills Mine site would add to the nearly 506 acres of wetlands and 50 miles of stream impacts that have already been permitted for surface coal mining operations within the Highland-Pigeon Creek watershed within the last 8 years. Therefore, we recommend that the applicant better describe the cumulative impacts of the proposed project in this watershed.

The Applicants' August 30, 2018 narrative identifies an additional 700 acres of wetlands and 153,160 linear feet of stream impacts related to future potential mining in the watershed and within the forested wetland Pigeon Creek corridor. These additional wetland and stream impacts should be considered by the Corps as part of the cumulative impacts analysis as reasonably foreseeable future impacts.

¹ 40 CFR Part 231.10

We are concerned that the additional mining activities associated with the High Point mine and Liberty mine expansion, as well as proposed and potential future mining associated with the Seven Hills mine, could cause or contribute to the impairment in Pigeon Creek.

Secondary Impacts 40 CFR 230.11(h)

The Applicant states that 323.58 acres of wetlands will be avoided. To do so, these resources must maintain all their current functions as mining occurs around and near them. The Applicant recognizes that some secondary impacts will occur through the "minor redistribution of floodwaters" and they acknowledge "[an] evaluation of the following information demonstrates that activity associated with this project has minimal impacts compared to the overall impacts to the cumulative watersheds."

We recommend that the applicant further assess potential secondary impacts of areas considered "avoided" including in the interior of the project area, along Pigeon Creek, and the periphery of the project area. The secondary impact assessment should be revised to include a more thorough review of impacts from a reduction in all hydrologic sources and a more thorough review of secondary impacts to project area aquatic resource functions.

Compensatory Mitigation 40 CFR Part 230.91-98

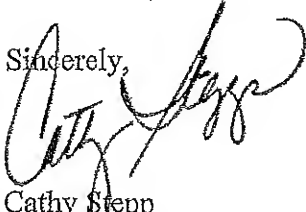
The Applicant proposes to re-establish 451 acres of wetlands on the mine site, which includes 150 acres of conditional mitigation and 30 acres of floodway enhancement. Given the high-quality wetlands currently in the project area, EPA is concerned that the proposed efforts to create or restore forested wetlands on recently mined land may not be successful in compensating for project impacts.

To compensate for project impacts, off-site mitigation, including mitigation for secondary impacts, would preferably occur in the Highland-Pigeon watershed and be part of contiguous wetland systems.

Once the Applicant has identified the off-site mitigation locations, EPA offers to work on this with the Corps and the Applicant.

Thank you for the opportunity to provide comments on this project. Please contact Linda Holst at 312-886-6758 with any questions you may have or to schedule additional discussions.

Sincerely,


Cathy Stepp
Regional Administrator

